



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 2213 OF 1999

FRANCIS MUTURI MUNIU PLAINTIFF

VERSUS

LEONARD KAMAU KARIUKI & 3 OTHERS..... DEFENDANTS

JUDGMENT

The plaintiff sued the 3 defendants jointly and severally, seeking an order “*that the defendants have no claim on title or interest in the parcels of land known as Kabete/Kibichiku/1189; Kabete/Kibichiku/1190; Kabete/Kibichiku/1192*”

The plaintiff further sought an order of injunction restraining the defendants by themselves, their agents or servants from entering or trespassing upon the parcels of land known as Kabete/ Kibichiku/1189, Kabete/Kibichiku/1190, Kabete/Kibichiku/1191, Kabete/Kibichiku/1192.

Summons to enter appearance was served on all the defendants, but none of them entered appearance or filed defence.

The plaintiff, Francis Muturi Muniu lives in Kibichiku, Kabete. He knows all the defendants. He recalled that one Grace Wanjiru Wangendo sold him a piece of land in 1983. It was No. Kabete/Kibichiku/660. The plaintiff bought one acre of this land and became registered and obtained a title deed. Later, he acquired another piece of land Kabete/Kibichiku/1099. He later still subdivided his land in 4 portions, Kabete/Kibichiku/1189, Kabete/Kibichiku/1190, Kabete/Kibichiku/1191; Kabete/Kibichiku/1192. He produced all the original title deeds, which are in his name.

Grace who sold the land to him died in 1989, and was buried on the portion described as Kabete/Kibichiku/1189, which belongs to the plaintiff.

He tried to stop Grace’s relatives from burying her on his land but they would not listen, and instead buried her on his land at night. Later in 1998, one Leonard Ngugi died, and he too was buried on the same piece of land, which is registered in the plaintiff’s name. This was again done at night.

All the defendants are Grace’s grandchildren, and they are the ones who have been burying dead relatives on the plaintiff’s land. The plaintiff does not, however, live on the four pieces of land. He only uses them for cultivation.

The plaintiff recalled that the defendants tried to stop him from cultivating his 4 pieces of land on 11th, 12th and 15th November 1999. Evidence on record shows clearly that all the plaintiffs were served with

summons to enter appearance, but they did not do so. However, no interlocutory Judgment was entered against them. It was prepared for the signature of the Deputy Registrar, but he/she did not sign it.

The plaintiff produced the original title documents showing that he is the owner of all the four pieces of land, though he does not live on them but simply cultivates.

His evidence that dead relatives of the defendants have been buried on one of these plots, secretly at night was not challenged. I find this to have been a violation of his rights over his property, which he had bought and subsequently registered in his name.

I am satisfied that these properties belong to the plaintiff. I therefore find judgment for the plaintiff against the defendant's jointly and severally, as prayed in prayers (a) and (c). I also award the plaintiff costs of the suit.

Dated at Nairobi this 1st day of August 2003.

JOYCE ALUOCH

JUDGE